

REMARKS

I. Introduction.

The Office Action of May 19, 2003 was issued following Applicants' amendment of February 12, 2003. The Office Action asserts that the February 12, 2003 reply was not responsive to the prior Office Action of August 12, 2002 but acknowledges that it was a bona fide reply.

Applicants respectfully submit that the current reply, in conjunction with the reply of August 12, 2002, is responsive to both the Office Action of May 19, 2003 and the previous Office Action of August 12, 2002 and address all of the points raised in both Office Actions.

Claims 1-11 and 13-68 were examined. Claims 1, 10, 13, 14, 33-40, 51 and 68 were amended. Claims 1-11 and 13-68 are pending in the application. Reconsideration is respectfully requested in light of the amendments and the following remarks.

II. Amended Claim 1 Particularly Points Out and Distinctly Claims Applicants' Invention.

The May 19, 2003 Office Action asserts that the "maintained" limitation in "an oil component in the container, wherein more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets" is not clear. The Office action also notes that the February 12, 2003 amendment did not put forward support found in applicant's disclosure for the amendment language.

In order to expedite prosecution of the application, Applicants have amended claim 1 to recite in part "an oil component in the container, wherein more of the oil component is contained in the container with the unpopped kernels than is contained with the sugar pellets." Support for the amendment may be found in the specification, which refers to the oil component being "maintained" and "contained" within a middle portion. *See, e.g.,* p. 2, lines 1-2 ("wherein more of the oil component is maintained in the container with the unpopped corn kernels than is maintained with the sugar pellets); p. 7, lines 1-13, lines 20-26 ("majority of the unpopped corn kernels 22 and the majority of the oil component are contained within a portion of the middle region nearest the other of the bottom region or the top region"). Claim 51 has been similarly amended to expedite prosecution of the application. Claims 10, 13, 14 and 37-40 were amended for better form.

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Considering the forgoing amendments and remarks, Applicants respectfully submit that the language of claim 1 is clear, and that claim 1 particularly points out and distinctly claims Applicants' invention.

III. The Amendments to Claim 51 Are Shown With Proper Markings.

The May 19, 2003 Office Action asserts that the amendments to claim 51 were not properly identified. After reviewing the Amendment of February 12, 2003 and the claims as originally filed, it appears that claim 51 was not amended in the February 12, 2003 reply, and thus, no markings were necessary since Claim 51, as originally submitted, included the "introducing into the container an oil component . . ." element. Pages 1, 9, 12, 13 and 17 of the February 12, 2003 Amendment indicate that only claim 1 was amended.

Applicants have, however, amended claim 51 in the current amendment in order to expedite prosecution of the application, as previously discussed. The amendments to claim 51 are properly identified with underlining and strikethroughs. Considering the forgoing amendments and remarks, Applicants respectfully submit that the amendments to claim 51 are properly identified.

IV. The Rejections of Claim 68 Are Addressed.

The Office Action of February 12, 2003 asserts that the amendment of February 12, 2003 did not address multiple rejections of claim 68 under 35 U.S.C. §102(b).

Applicants have amended claim 68 to include the limitation "introducing into the container an oil component, wherein more of the oil component is contained in the container with the unpopped kernels than is maintained with the sugar pellets." The following remarks address the rejections.

V. Pending Claims 1-11 and 13-68 Are Patentable Over the Cited References.

Since claim 12 was canceled without prejudice, the rejections of claims 1-11 and 13-68 are addressed. In view of the forgoing amendments and remarks submitted herewith and in the reply of February 12, 2003, Applicants respectfully submit that the application is now in condition for allowance.

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In the Office Action of August 12, 2002, the Examiner rejected claims 1 to 3, 6 to 9, 14 to 17, 49, 51 and 68 under 35 U.S.C. § 102(b) as allegedly anticipated by Katz et al. (U.S. Patent No. 3,851,574). The Examiner rejected claims 51, 54 to 56, 58, 60, 61 and 68 under 35 U.S.C. § 102(b) as allegedly anticipated by LaBaw et al. (U.S. Patent No. 4,904,488). The Examiner rejected claims 1, 2, 4 to 10, 12, and 49 to 51 and 68 under 35 U.S.C. § 102(b) as allegedly anticipated by Sheu (WO 00/60954). The Examiner rejected claims 1 to 3, 6 to 9, 12 to 15, 18, 49, 51, 54, 60 to 65 and 68 under 35 U.S.C. § 102(b) as allegedly anticipated by Glass (U.S. Patent No. 5,897,894). The Examiner rejected claims 51, 54, 55, 56 and 58 under 35 U.S.C. § 102(b) as allegedly anticipated by Jensen et al. (U.S. Patent No. 5,443,858) as evident by Watkins et al. (U.S. Patent No. 5,044,777). The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over Sheu in view of Smith (U.S. Patent No. 3,556,811).

The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as alleged by being unpatentable over Sheu. The Examiner rejected claims 57 and 59 under 35 U.S.C. § 103(a) as allegedly unpatentable over LaBaw in view of Katz. The Examiner rejected claims 52, 53, 62 and 66 under 35 U.S.C. § 103(a) as allegedly unpatentable over LaBaw in view of Glass. The Examiner rejected claim 67 under 35 U.S.C. § 103(a) as allegedly unpatentable over LaBaw in view of Glass and Katz. The Examiner rejected claims 19 to 34, 38, 39 and 41 to 47 under 35 U.S.C. § 103(a) as allegedly unpatentable over Glass in view of LaBaw and Watkins. The Examiner rejected claims 35 to 37, 40 and 48 under 35 U.S.C. § 103(a) as allegedly unpatentable over Glass in view of LaBaw and Watkins and Grunewald-Kirstein (U.S. Patent No. 3,843,814). Applicants respectfully traverse these rejections.

Claims 1 and 51 are independent. Claim 1, as currently amended, recites a sweet microwave popcorn product comprising a microwaveable container; a plurality of unpopped corn kernels in the container; a plurality of sugar pellets in the container, wherein each sugar pellet comprises sugar in an amount of at least about 15% by weight, based on the total weight of the sugar pellet, wherein the sugar pellets are substantially free of an emulsifying agent; and an oil component in the container, wherein more of the oil component is contained in the container with the unpopped kernels than is contained with the sugar pellets. Claim 51, as currently amended, recites a method for producing a microwave popcorn product comprising providing a microwaveable container having a top, a bottom, and an opening at the top of the container; introducing into the container sugar pellets and unpopped corn kernels, wherein the

sugar pellets and unpopped corn kernels are not homogeneously mixed; introducing into the container an oil component, wherein more of the oil component is contained in the container with the unpopped corn kernels than is contained with the sugar pellets. Claim 68, as currently amended, also includes the same oil component limitation. As explained in the specification, with this arrangement the corn acts generally as a buffer between the sugar pellets and the oil component, thereby reducing burning of the sugar pellets, which previously was a problem in this art. (See page 7, lines 22 to 24.) The cited references, even in combination, fail to teach or suggest the claimed invention.

Katz is directed to a coated popcorn product. Katz describes at column 4, lines 50 to 59, how the product is prepared. Specifically, any flavorings and/or seasonings are pre-blended, then mixed with corn syrup solids, starch and salt. This total dry mix is dispersed in shortening (such as vegetable oil). The popcorn kernels are then added to the portions of the flavor, film former and shortening premix (which can include sugar) in the individual containers. In other words, the sugar and oil components are premixed prior to the addition of the popcorn kernels, indicating that, at best, the oil component is equally distributed with the sugar and popcorn kernels. Katz goes on to state, at column 5, lines 4 to 14, that “[a] preferred method of preparing the coating is to intimately mix the film former (which can contain sugar), flavor and fat (which can be oil). . . . The corn is added next and mixing is continued.” This passage suggests that more of the oil component is maintained with the sugar than with the unpopped kernels. Katz nowhere teaches or suggest that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed. Accordingly, Katz does not anticipate or render obvious the claimed invention.

LaBaw is directed to a uniformly-coated, flavored microwavable popcorn product. Exemplary flavorings include barbecue sauce flavoring (which can include sugar) and caramel flavoring (which can also contain sugar). (See column 5, lines 53 to 54, and lines 66 to 67.) In one embodiment, the flavoring is applied during microwave corn popping by interspersing the flavoring with corn, oil and other ingredients in the bag to be subjected to microwaves. (See column 4, lines 51 to 54.) In an alternative embodiment, the flavoring is applied after the corn is popped. (See column 4, lines 58 to 60.) However, LaBaw nowhere teaches or suggests that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed. Accordingly,

LaBaw does not anticipate or render obvious the claimed invention. Further, the combination of LaBaw and Katz does not render obvious the claimed invention, as they both suffer from the same deficiency.

Sheu is directed to microwavable popcorn compositions for preparing popcorn with a glaze coating. Sheu discloses providing an amorphous glaze coating premixture in contact with unpopped corn kernels, and then microwaving the mixture. The amorphous glaze coating comprises a hard candy base that can include sugar and optionally a flavoring agent, which can comprise an oil. Accordingly, Sheu teaches that any oil and sugar components are premixed in the amorphous glaze coating premixture before being put into contact with the unpopped corn kernels. Sheu nowhere teaches or suggests that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed. Accordingly, Sheu does not anticipate or render obvious the claimed invention.

Smith does not make up for the deficiencies of Sheu. Smith is directed to a carbohydrate-containing base for hard candy. Smith describes that the hard candy base can be poured onto popcorn (which apparently has already been popped) with stirring to coat the popcorn. (See column 9, lines 18 to 25.) Thus, Smith similarly does not teach or suggest that more of an oil component is maintained in the container with the unpopped kernels than is maintained with sugar pellets.

Glass is directed to microwave popcorn compositions comprising a microwave popcorn bag and a charge of kernel popcorn having quantities of fat and coarse salt. Glass describes that a fat slurry is prepared by mixing the fat with salt and any optional ingredients to form a slurry, and then the slurry is sprayed into the microwave popcorn bag after the unpopped kernels have been introduced into the bag. (See column 6, lines 7 to 12; column 7, lines 36 to 38.) Thereafter, the bag is advanced to the “third salt and/or other particulate filling station.” (See column 7, lines 39 to 41.) Glass describes that the “other particulate” can include sugar. (See column 6, lines 60 to 64.) Thus, according to Glass, the fat is introduced into the container between the unpopped kernels and the optional sugar component. However, Glass does not teach or suggest that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed.

Moreover, Glass teaches further away from the claimed invention and from the other cited references discussed above, as Glass states that preferably the composition is sugar free to avoid sugar related scorching. (See column 6, line 65, to column 7, line 3.) Thus, one skilled in the art would not

look to any teachings in Glass to modify the processes of Katz, LaBaw or Sheu, which are directed to the inclusion of sugar, to solve the problem of reducing sugar scorching, as Glass solves this problem by removing the sugar altogether. Glass, in contrast, is directed to creating a “homestyle” popped popcorn seasoned by larger-sized more granular table salt without using the conventional process whereby the salt is added directly to the fat slurry. (See column 2, lines 25 to 39.)

Accordingly, for all these reasons, Glass does not anticipate or render obvious the claimed invention, even when combined with LaBaw and/or Katz.

Jenson is directed to a composition for sweetening microwave popcorn and a method for preparing sweetened microwave popcorn. Jenson provides that unpopped corn is provided in a package. Thereafter, a first blend including sugar and oil is added to the popcorn. Then a second blend, including corn syrup, is added after the first blend. (See column 7, lines 46 to 50.) In other words, Jenson teaches that sugar and oil should be mixed before being introduced with the corn kernels. Jenson nowhere teaches or suggests that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed. Accordingly, Jenson does not anticipate or render obvious the claimed invention.

In connection with the rejection over Jenson and the rejection over the combination of Glass and LaBaw, the Examiner relied on teachings in Watkins. Watkins is directed to a packaging for popping corn, but nowhere teaches or suggests the use of sugar or oil in combination with the unpopped kernels, much less that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets. Accordingly, Watkins does not remedy the deficiencies of Jenson, Glass, and LaBaw.

The Examiner relied on Grunewald-Kirstein in connection with the rejection over the combination of Glass, LaBaw and Watkins. Grunewald-Kirstein is directed to a method for preparing coated popcorn. Grunewald-Kirstein describes dissolving sugar in oil to form a liquid coating mass. Raw corn kernels are then added to the liquid coating mass. (See abstract.) Thus, Grunewald-Kirstein, like the other cited references, does not teach or suggest that more of the oil component is maintained in the container with the unpopped kernels than is maintained with the sugar pellets, as presently claimed. Accordingly, Grunewald-Kirstein does not remedy the deficiencies of Glass, LaBaw and Watkins.

VI. Conclusion.

In view of the foregoing remarks, Applicants submit that pending claims 1 to 11 and 13 to 68 are in condition for allowance and respectfully request that all of the rejections be withdrawn. A timely indication of allowance is respectfully requested. If there are any remaining issues that can be addressed by telephone, Applicants invite the Examiner to contact the undersigned at the number indicated below.

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Respectfully submitted,
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